

ROB BONTA
Attorney General of California
T. MICHELLE LAIRD
Acting Senior Assistant Attorney General
NOEL A. FISCHER, State Bar No. 232553
LISA L. FREUND, State Bar No. 249174
TIMOTHY M. MUSCAT, State Bar No. 148944
Deputy Attorneys General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7779
Fax: (916) 323-2319
E-mail: Timothy.Muscat@doj.ca.gov
Attorneys for Defendants

GEORGE FORMAN, State Bar No. 47822
JAY B. SHAPIRO, State Bar No. 224100
MARGARET C. ROSENFELD, State Bar No. 127309
FORMAN SHAPIRO & ROSENFELD LLP
5055 Lucas Valley Road
Nicasio, CA 94946
Telephone: (415) 491-2310
Email: george@fsrlegal.net
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

**BEAR RIVER BAND OF ROHNERVILLE
RANCHERIA, a federally recognized
Indian Tribe,**

Plaintiff,

v.

**STATE OF CALIFORNIA, and GAVIN
NEWSOM IN HIS OFFICIAL CAPACITY
AS GOVERNOR OF CALIFORNIA,**

Defendants.

1:20-cv-01539-ADA-SKO

**JOINT STIPULATION FOR
APPOINTMENT OF MEDIATOR
SCOTT BALES; [PROPOSED] ORDER**

1 George Forman, attorney of record for plaintiff Bear River Band of Rohnerville
2 Rancheria, a federally recognized Indian Tribe (Plaintiff), on the one hand, and Noel A. Fischer,
3 Lisa L. Freund, and Timothy M. Muscat, Deputy Attorneys General, attorneys for defendants
4 Governor Gavin Newsom, in his official capacity as Governor of California, and the State of
5 California (State) (collectively, State Defendants) on the other hand, stipulate as follows:

6 Whereas, on August 12, 2020, Plaintiff filed its Complaint for Declaratory and Injunctive
7 Relief (Complaint) against the State Defendants seeking relief under the Indian Gaming
8 Regulatory Act (IGRA), 25 U.S.C. §§ 2710-2721.

9 Whereas, on January 26, 2023, the Court, based upon a stipulation by the Plaintiff and
10 State Defendants (Parties), granted summary judgment in Plaintiff's favor on the first claim for
11 relief in its Complaint, consistent with the Ninth Circuit's decision in *Chicken Ranch Rancheria*
12 *of Me-Wuk Indians v. California*, 42 F.4th 1024 (9th Cir. 2022), and the undisputed facts agreed
13 upon by the parties.

14 Whereas, on January 26, 2023, the Court further ordered the Parties to proceed pursuant to
15 the remedial process set forth in 25 U.S.C. §§ 2710(d)(7)(B)(iii)-(vii).

16 Whereas, as part of the remedial process set forth in 25 U.S.C. §§ 2710(d)(7)(B)(iii)-(vii),
17 the Parties now jointly request this Court to appoint Scott Bales, retired Chief Justice of the
18 Arizona Supreme Court (Justice Bales), to serve as the Court-appointed mediator pursuant to 25
19 U.S.C. §§ 2710(d)(7)(B)(iv). A copy of Justice Bales' Curriculum Vitae is attached hereto as
20 Exhibit A.

21 Whereas, Justice Bales' mediation service has advised the Parties that he is available to
22 accept this appointment by the Court.

23 ///

24 ///

25 ///

1 Whereas, if appointed by this Court, the Parties will jointly advise Justice Bales of his
2 appointment, prepare and submit to him joint instructions on his duties as a court-appointed
3 mediator under 25 U.S.C. § 2710(d)(7)(B)(iv), and establish with his mediation service a
4 mutually acceptable time schedule for Justice Bales to complete the performance of his mediator
5 duties.

6 Dated: June 29, 2023

Respectfully submitted,

7 ROB BONTA
8 Attorney General of California
9 T. MICHELLE LAIRD
10 Acting Senior Assistant Attorney General
11 NOEL A. FISCHER
12 Deputy Attorney General
13 LISA L. FREUND
14 Deputy Attorney General

/s/ Timothy M. Muscat

TIMOTHY M. MUSCAT
Deputy Attorney General
Attorneys for Defendants

15 Dated: June 28, 2023

Respectfully submitted,

16 FORMAN SHAPIRO & ROSENFELD LLP
17 GEORGE FORMAN
18 JAY B. SHAPIRO
19 MARGARET C. ROSENFELD

*/s/ George Forman (as authorized on
6/28/23)*

20 GEORGE FORMAN
21 Attorneys for Plaintiff
22
23
24
25
26
27
28

ORDER

Pursuant to the joint stipulation by the Parties, the Court appoints retired Arizona Supreme Court Chief Justice Scott Bales (Justice Bales) to serve as the mediator in this matter pursuant to 25 U.S.C. § 2710(d)(7)(B)(iv).

The parties are ordered to work cooperatively in jointly advising Justice Bales of his appointment, jointly preparing and submitting to him instructions on his duties as a court appointed mediator under 25 U.S.C. § 2710(d)(7)(B)(iv), and establishing with his mediation service a mutually acceptable time schedule for Justice Bales to complete the performance of his mediator duties.

IT IS SO ORDERED.

Dated:

HONORABLE ANA DE ALBA
United States District Judge

EXHIBIT A



Judicial Service

Chief Justice
Arizona Supreme Court

Location

Phoenix, AZ

Expertise

Appellate
Attorney Fee
Commercial Disputes
Complex Litigation
Contracts
Corporate Investigations/White Collar
Energy, Oil, Gas & Water

Justice Scott Bales (Retired)

Chief Justice Arizona Supreme Court

Arbitrator, Mediator, Mock Trials, Corporate Investigations

Hon. Scott Bales served on the Arizona Supreme Court for fourteen years, including as Chief Justice from July 2014 through July 2019. As a member of the Conference of Chief Justices, he served on its Board of Directors, chaired its Education Committee, and was a member of the Amicus Brief Review Team. Justice Bales also chaired the Appellate Judges Conference of the ABA's Judicial Division. He currently chairs the ABA's Council for the Section on Legal Education and is a member of the Council of the American Law Institute.

Chief Justice Bales has received numerous awards for his work as a jurist, including the Arizona State Bar's James A. Walsh Outstanding Jurist Award (2019), the American Judges Association's Chief Justice Richard Holmes Award of Merit (2018), and the Judicial Management Institute's Ernest C. Friesen Award of Excellence (2018).

Before taking the bench, Chief Justice Bales practiced law for nearly twenty years as a private and public lawyer. He was a partner in Phoenix firms that later became Osborn Maledon P.A. and Lewis Roca Rothgerber Christie. He was Arizona's Solicitor General from 1999-2001, and he served as a Deputy Assistant Attorney General for the U.S. Department of Justice's Office of Policy Development, a federal prosecutor in the U.S. Attorney's Office in Phoenix, and a Special Investigative Counsel for the Justice Department's Inspector General. He authored briefs for scores of appeals, participated in 27 oral arguments before state and federal appellate courts, and was elected to the American Academy of Appellate Lawyers. He also worked on internal investigations for public and private clients, including the Arizona Senate, and on civil and criminal matters related to Arizona's tribal lands.

Justice Bales' broad ranging experience makes him exceptionally qualified to assist parties and their counsel by serving as an arbitrator or mediator, conducting moot courts, or participating in internal investigations.

Representative Matters:

While serving on the Arizona Supreme Court, Chief Justice Bales considered thousands of petitions for review, participated in nearly 500 merits decisions, and authored 120 opinions. Some examples are listed below.

CONTRACTS/TORTS:

Sanders v. Alger, 242 Ariz. 246, 394 P.3d 1083 (2017) (patient's duty of care to health care provider)

Sullivan v. Pulte Home Corp., 232 Ariz. 344, 306 P.3d 1 (2013) (application of economic loss doctrine in residential construction defect action)

Flagstaff Affordable Housing v. Design Alliance, 223 Ariz. 320, 223 P.3d 664 (2010) (application of economic loss doctrine to construction defect claim)

Gipson v. Kasey, 214 Ariz. 141, 150 P.3d 228 (2007) (identifying duties in tort law)

PROFESSIONAL LIABILITY:

In Re Sky Harbor Hotel Properties LLC, 246 Ariz. 531, 443 P.3d 21 (2019) (fiduciary duties for members and managers in limited liability company)

1800 Ocotillo v. The WLB Group, 219 Ariz. 200, 196 P.3d 222 (2008) (enforceability of loss limitation clause in professional services contract)

Webb v. Gittlen, 217 Ariz. 363, 174 P.3d 275 (2008) (assignment of professional negligence claims against insurance agent)

CIVIL PROCEDURE/EVIDENCE:

Kopp v. Physician Group of Arizona, 244 Ariz. 439, 421 P.3d 149 (2018) (claim preclusive effect of stipulated dismissal)

Baker v. University Physicians Healthcare, 231 Ariz. 379, 296 P.3d 42 (2013) (state statutory requirements for expert witness in medical malpractice action)

Preston v. Kindred Hospitals West, 226 Ariz. 391, 249 P.3d. 771 (2011) (requirement that action be prosecuted by real party in interest)

Cardona v. Kreamer/Lac Vieux, 225 Ariz. 143, 235 P.3d 1026 (2010) (application of Hague Service Convention)

Lake v. City of Phoenix, 222 Ariz. 547, 218 P.3d 1004 (2009) (application of public records law to metadata)

WATER LAW:

ADWR v. McClennen (Mohave County), 238 Ariz. 371, 360 P.3d 1023 (2015)
(challenges to agency approval of transfer of water rights)

Davis/Chino Grande v. Agua Sierra Resources, 220 Ariz. 108, 203 P.3d 506 (2009)
(reservation of groundwater rights upon sale of land)

Maricopa-Stanfield Irr. & Drainage Dist. v. Robertson, 211 Ariz. 485, 123 P.3d 1122
(2005) (water rights under state and federal law)

INSURANCE:

First American Title Ins. Co. v. Action Acquisitions, 218 Ariz. 394, 187 P.3d 1107
(2008) (coverage of title insurance policy)

Appellate cases in which Chief Justice Bales participated as an attorney include:

Bennett v. Napolitano, 206 Ariz. 520, 81 P.3d 311 (Ariz. 2003) (defending
governor's exercise of veto powers)

American Greyhound Racing v. Hull, 305 F.3d 1015 (9th Cir. 2002) (defending
governor's entry of tribal gaming compacts)

United States v. Johnson, 297 F.3d 845 (9th Cir. 2002) (defending appeal from
convictions of six defendants resulting from 4 ½ month trial for telemarketing
scheme)

FORMER POSITIONS:

Chief Justice, Arizona Supreme Court, 2014-19; Associate Justice, 2005-2014

Executive Director, Institute for the Advancement of the American Legal System,
University of Denver, 2019-2020

Counsel and Partner, Lewis & Roca LLP, 2001-2005

Solicitor General, Office of the Arizona Attorney General, 1999-2001

Deputy Assistant Attorney General, Office of Policy Development, U.S. Department
of Justice (on detail from U.S. Attorney's Office), 1998-1999

Special Investigative Counsel, Office of the Inspector General, U.S. Department of
Justice (on detail from U.S. Attorney's Office), 1995-1998

Assistant United States Attorney, District of Arizona, 1995-1999

Associate and Partner, Meyer Hendricks Victor Osborn & Maledon P.A., 1985-1994

Law clerk to Justice Sandra Day O'Connor, U.S. Supreme Court, 1984-1985

Law clerk to Judge Joseph T. Sneed III, U.S. Court of Appeals for the Ninth Circuit,
1983-1984

Law clerk to Office of the Solicitor General, U.S. Department of Justice, 1983

ADMITTED TO PRACTICE:

Arizona (1985)

EDUCATION:

J.D., Harvard Law School (Magna Cum Laude, 1983)

M.A., Economics, Harvard University (1980)

B.A., Economics and History, Michigan State University, (Summa Cum Laude, 1978)

SPEAKING ENGAGEMENTS:

Chief Justice Bales frequently serves as a panelist or speaker at conferences, judicial education programs, and law school classes. Examples include:

Judicial System Reform Ideas for Law School Deans and Jurists to Improve Public Trust and Confidence, National Judicial College, webinar, October 2020 (panelist)

Best Practices in Court Administration: What We Have Learned from COVID-19, Berkeley Judicial Institute, Berkeley Law School, webinar, June 2020 (panelist)

Views from the Bench, Bolch Judicial Institute, Duke Law School, Raleigh, September 2019 (panelist)

Pretrial Reform, National Center for State Courts Civil Justice Program, Journalist Law School, Loyola Law School, Los Angeles, June 2018 (panelist)

Judicial Leadership in Civil Justice Reform, Conference of Chief Justices Western Region Civil Justice Reform Summit, Park City, May 2017 (panelist)

Judges as Reform Leaders, MacArthur Foundation Safety and Justice Challenge Network Meeting, Seattle, October 2016 (panelist)

PUBLISHED WORKS:

Chief Justice Bales' published works include:

Is Sooner Sometimes Better than Later? Arizona's Early Bar Exam, Bar Examiner, March 2017

Two Presidents, Two Inaugurations, and the Course of Freedom, 45 U.C. Davis L. Rev. 261 (2011)

Justice Sandra Day O'Connor: No Insurmountable Hurdles, 58 Stan. L. Rev. 1705 (2006)

The Ninth Circuit: Should It Stay or Should It Go?, 34 U.C. Davis L. Rev. 379 (2000)

Turning the Microscope Back on Forensic Scientists, Litigation, Winter 2000

PROFESSIONAL AND COMMUNITY SERVICE:

American Law Institute. Member (elected 2007). Council. 2014-present

ABA Section on Legal Education and Admission to the Bar, Council, 2018-present;
chair, 2020-present

Committee on Federal-State Jurisdiction to the Judicial Conference of the United
States, 2015-2019

Appellate Judges Conference, ABA Judicial Division, Executive Committee,
2008-2016; chair 2014-2015

Arizona State University, Sandra Day O'Connor College of Law, Adjunct Professor
University of Arizona, James E. Rogers College of Law, Adjunct Professor

American Inns of Court Foundation, Board of Trustees, 2006-2010

Ninth Circuit Court of Appeals, Advisory Committee on Rules of Practice and
Internal Operating Procedures, 2001-2005

Lawyer Representative, Ninth Circuit Judicial

[1-18-21]

CERTIFICATE OF SERVICE

Case Name: **Bear River Band v. State of California, et al.** No. **1:20-cv-01539-ADA-SKO**

I hereby certify that on June 29, 2023, I caused to be electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

JOINT STIPULATION FOR APPOINTMENT OF MEDIATOR SCOTT BALES; [PROPOSED] ORDER

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 29, 2023, at Sacramento, California.

Linda Thorpe
Declarant

/s/ Linda Thorpe
Signature